IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/09/2002

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

SECOND APPEAL NO. 68 OF 1998

S.Narayanasamy Reddiar .... Appellant/
plaintiff

-Vs-

K.P.Sivaraman ..Respondent/
Defendant

Second Appeal preferred against the judgement and decree dated 12.9.1996 made in A.S.No.39 of 1996 on the file of the Principal District Judge, South Arcot District at Cuddalore confirming the judgment and decree dated 23.1.1996 in O.S.No: 139 of 1994 on the file of the Subordinate Judge, Virudhachalam.

!For appellants :: Mr.V.Rengaraj

^For respondents:: Mr.D.Bharathachakravarthy

:JUDGMENT

The plaintiff in O.S.No.139 of 1994 on the file of the Subordinate Judge, Virudhachalam, who lost before the two courts below is the appellant in this second appeal.

2. On 13.2.1999, R.JAYASIMHA BABU,J., ordered notice regarding admission returnable in six weeks. The respondent has been served and he has entered appearance through Mr.D.Bharathachakravarthy.

3. The second appeal is taken up for final disposal with the consent of counsel for either side. The learned counsel for the appellant raised the following substantial questions of law:-

"1. Whether the courts below are right in holding that the pro note is not supported by the consideration when there are no vitiating circumstances and he execution of pro note is proved and when the presumption under section 118 of Negotiable Instrument Act hold the field?

2. Whether in law the courts below right in overlooking the presumption laid down in Section 118 of Negotiable Instrument Act that a Negotiable Instrument

is fully supported by consideration and that the onus is on the respondent who sought to rebut on it to prove his case especially when the execution of pro note is proved?

4. The above two questions of law could be considered together. For convenience, the parties will be referred as arrayed before the trial court.

5. The plaintiff instituted the suit O.S.No.139 of 1994 on 14.7.1994 for recovery of a sum of Rs.55,057.50 with subsequent interest due thereon. According to the plaintiff the defendant borrowed Rs.45,000/= on 20th January, 1992 from the plaintiff and executed the suit promissory note Ex.A.1. Despite demands the defendant failed to repay the amount due. Hence the suit.

6. The defendant pleaded that he has not executed the suit promissory note Ex.A.1, dated 20.1.1992 in favour of the plaintiff, the suit promissory note is a fabricated document. The defendant further pleaded that he and the plaintiff were thick friends for over four decades and they were jointly doing P.W.D contract works. On 20.1.1992 the defendant borrowed Rs.30,000/= from the plaintiff by pledging his three rows gold chain weighing 6 « sovereigns bearing the initial KPS and a 6 sovereign chain with dollar bearing red and white stones, in all aggregating to 22 « sovereigns. In proof of the said pledging the plaintiff executed a letter in his letter head and handed over the same to the defendant. Thereafter the defendant has not done the contract work jointly. The plaintiff has fraudulently fabricated the promissory note and filed the present suit. The suit promissory note is false and it is not supported by consideration and the defendant prayed for dismissal of the suit.

7. The plaintiff examined himself as P.W.1 besides one Shanmugham as P.W.2 and marked Exs.A.1 to A.3, being suit promissory note, notice and reply respectively. The defendant examined himself as D.W.1, besides one Ramanathan as D.W.2. The defendant also marked Ex.B.1, the plaintiff's letter dated 20.1.1992 and the contents of the Ex.B.1 letter has been marked as Ex.B.2.

8. The trial court though held that the signature found on Ex.A.1 promissory note is that of the defendant but noticed that there is signature not only on the revenue stamp affixed, but also beneath creating a doubt. The trial court also concluded that the defendant had executed Ex.A.1 promissory note. But in the light of Ex.B.1 held hat Ex.A.1 promissory note was executed on blank form, no amount was advanced underEx.A.1, but the defendant had pledged his jewels and availed a jewel loan of Rs.30,000/=, on the very same date as seen from Ex. B.1/B2. There is no chance for the plaintiff advanced another sum Rs.40,000/= under Ex.A.1. The trial court also held that the plaintiff has not advanced the money under Ex.A.1, Promissory note and that the promissory note is not supported by consideration while accepting the evidence of D.W.1 and Ex.B.1.

9. Aggrieved by the dismissal of the suit, the plaintiff preferred first appeal in A.S.No.39 of 1996 on the file of the District Court, South Arcot. The first appellate court framed the following two points for consideration:-

(i) Whether the suit promissory note is true?
(ii) Whether the defendant is liable to pay the sum as claimed by the plaintiff?

10. On point No.1, the first appellate court held that the conclusion of the trial court that Ex.A.1 promissory note is executed by the defendant and signature in Ex.A.1 is that of the defendant is correct. On point No.2, the lower appellate court held that under Ex.A.1, promissory note, no consideration was passed and that Ex.B.1 executed by the plaintiff would show that the defendant has borrowed money on the same date by pledging his jewels and there is no necessity to borrow any further sum, nor there is evidence to show that the plaintiff had cash of Rs.45,000/= in addition to Rs.30,000/= advanced under jewel loan Ex.B.1.

11. The learned counsel for the appellant while advancing the above two substantial questions of law, took the court through the judgments of the two courts below and contended that the rule of presumption under Section 118 of The Negotiable Instruments Act should have been applied and the courts below should have granted a decree as prayed for when once the courts come to the signature is admitted and the conclusion that Ex.A.1 promissory note bears the signature of the defendant.

12. Per contra, Mr.Bharathachakravarthy, learned counsel appearing for the respondent/defendant contended that the suit promissory note is not supported by consideration and Ex.B.1/B.2 would belie the very plaintiff's claim of advance of such huge sum on the very same date. Ex.A.1 and the evidence of D.Ws.1 and 2 has been accepted by the two courts below concurrently. The learned counsel further contended that being concurrent findings and there being no illegality or perversity in the appreciation of evidence, no interference is called for in this second appeal.

13. Taking up both the questions of law advanced by the counsel for the appellant, it is true that the suit promissory note bears the admitted signature of the defendant. The further finding of the two courts below on a consideration of oral evidence being that the promissory note was not filled up on the date when the defendant affixed his signatures but it has been filled up subsequently. The two courts below further held that Ex.B.1/B.2 has been executed on the date of Ex.A.1 itself when the defendant has availed jewel loan for Rs.30,000/= after pledging his jewels with the plaintiff. But the plaintiff has chosen to deny the signature found in Ex.B.1 and sought to contend that it is a fabricated document. The two courts below concurrently held that the signature in Ex.B.1 is that of plaintiff and it is a true document. When once it is held that Ex.B.1 is true and has been proved, it follows that on the date of Ex.A.1 the defendant has availed jewel loan for a substantial sum by pledging his jewels. When the defendant has pledged jewels in a sum of Rs.30,000/= it is not known as to how the plaintiff could have advanced Rs.40,000/= on a simple promissory note. That apart, the admissio n of P.W.1 would show that there has been prior relationship between the plaintiff and the defendant in the execution of P.W.D contract work and there had been dealings with each other, which came to an end after Ex.B.1.

14. The courts below rightly held that the plaintiff has not advanced any amount under Ex.A.1, promissory note and that Ex.A.1 promissory note is not supported by consideration, as the plaintiff has not established his possession of the cash of Rs.45,000/= in addition to Rs.30,000/= advanced under jewel loan under Ex.B.1 on the same date. The two courts below considered the oral and documentary evidence and rightly disbelieved the plaintiff and accepted the evidence of D.W.1. I do not find any perversity in the appreciation of oral and documentary evidence by the two courts below. It is not the contention of the learned counsel for the appellant that any material admission has been omitted to be considered. Sitting in Second Appeal this court will not be justified in interfering with the concurrent findings of the courts below or reappreciating the evidence in the absence of any perversity in the appreciation of evidence. The findings recorded by the two courts below are balanced.

15. As regards the contention that rule of presumption under Section 118 of The Negotiable Instruments Act, it is rightly pointed out by the courts below that the said presumption has been rebutted by the defendant by producing Ex.B.1/B.2 apart from examining himself, besides the plaintiff has failed to establish that he was having cash of Rs.75,000/= in all on the date of Ex.A.1. Further, nothing has been suggested or established to show that the defendant was in need of such a huge sum. Ex.B.1 would show that the plaintiff has taken the jewels on pledge and advanced Rs.30,000/= on the very same date of Ex.A.1. This would show that the very presumption has been rebutted by the defendant and the two courts below have rightly held that Ex.B.1 promissory note is not supported by consideration and that the defendant is not liable for the suit claim. In the light of the above discussion, the two questions of law are answered against the appellant and in favour of the respondent.

16. In the result, the second appeal fails and it is dismissed, but without costs.

Index:Yes
Internet:Yes
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06-09-2002

To

1.The Subordinate Judge, Viruchachalam.

2.The Principal District Judge, Cuddalore.